

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 LePATNER & ASSOCIATES, LLP.,  
12 PROACTIVE INTEGRITY  
13 ASSOCIATES, LLC, and LePATNER  
14 C3, LLC,

Plaintiffs,

vs.

15 THOMAS JEFFERSON SCHOOL OF  
16 LAW and RUDY HASL,

Defendants.

CASE NO. 13-CV-01950-H (JMA)

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS WITHOUT  
PREJUDICE**

[Doc. No. 13]

17  
18 On August 21, 2013, Plaintiffs LePatner & Associates, LLP, Proactive Integrity  
19 Associates, LLC, and LePatner C3, LLC ("Plaintiffs") filed a complaint against  
20 Defendants Thomas Jefferson School of Law and Rudy Hasl ("Defendants"), alleging  
21 state law causes of action for breach of contract, intentional misrepresentation,  
22 negligent misrepresentation, and quantum meruit. (Doc. No. 1.) On November 20,  
23 2013, Defendants filed a motion to dismiss Plaintiffs' complaint. (Doc. No. 13.) On  
24 December 23, 2013, Plaintiffs filed their opposition to Defendants' motion. (Doc. No.  
25 14.) On December 30, 2013, Defendants filed their reply. (Doc. No. 15.) On  
26 December 31, 2013, the Court vacated a hearing scheduled for January 6, 2014, and  
27 submitted the motion. (Doc. No. 16.) The Court grants Defendants' motion to dismiss  
28 without prejudice.

1 Federal Rule of Civil Procedure 17(b) requires that all entities initiating a lawsuit  
 2 in federal court have legal capacity to sue. Subsection 3 of the rule describes the  
 3 requirements for all entities other than individuals and corporations; it directs courts  
 4 to apply “the law of the state where the court is located” in determining whether an  
 5 entity has capacity to sue. Fed. R. Civ. P. 17(b)(3). Defendants argue, and Plaintiffs  
 6 concede, that California law requires foreign limited liability companies and  
 7 partnerships to register in the state before it can maintain any legal action in the state.  
 8 (Doc. No. 13-1 at 17; Doc. No. 14 at 21.) See also Cal. Corp. Code § 16959(h) (“A  
 9 foreign limited liability partnership transacting intrastate business in this state shall not  
 10 maintain any action, suit, or proceeding in any court of this state until it has registered  
 11 in this state pursuant to this section.”); Cal. Corp. Code § 17708.07(a) (“A foreign  
 12 limited liability company transacting intrastate business in this state shall not maintain  
 13 an action or proceeding in this state unless it has a certificate of registration to transact  
 14 intrastate business in this state.”).<sup>1</sup> Plaintiffs further concede that the California  
 15 Secretary of State had not yet issued their registrations as of the date on which they  
 16 filed their opposition to Defendant’s motion to dismiss. (Doc. No. 14-1, LePatner  
 17 Decl., ¶¶ 2-4.) The Court, in view of the present record, determines that Plaintiffs lack  
 18 the capacity to sue within the meaning of Rule 17.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

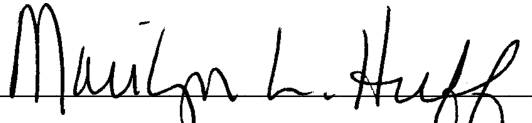
---

25  
 26 <sup>1</sup>The California Corporate Code defines “intrastate business” as “entering into  
 27 repeated and successive transactions of its business in this state, other than interstate  
 28 or foreign commerce.” Cal. Corp. Code § 191. Plaintiffs also do not dispute  
 Defendant’s assertion that Plaintiffs conduct intrastate business in California within the  
 meaning of the phrase under California law. (See Doc. No. 13-1 at 18-19; Doc. No. 14  
 at 21.)

1 Accordingly, the Court grants Defendants' motion to dismiss without prejudice.  
2 To cure deficiencies in their legal capacity, Plaintiffs must file a notice confirming their  
3 completed registrations and full compliance with Federal Rule of Civil Procedure 17(b)  
4 within **thirty (30) days** from the date of this order. Failure to do so may result in the  
5 dismissal of this action.

6 **IT IS SO ORDERED.**

7 DATED: January 3, 2014

8   
9 MARILYN L. HUFF, District Judge  
10 UNITED STATES DISTRICT COURT  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28